

### **REMARKS**

Claims 23-27 were pending in the application. The Office Action dated February 27, 2009 ("Office Action") objected to the Specification as failing to provide proper antecedent basis for the claimed subject matter. The Office Action rejected claims 25-27 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action rejected claims 23-27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office Action rejected claims 23 and 24 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,156,594 to Keith ("Keith") in view of U.S. Patent No. 6,030,405 to Zarbatany et al. ("Zarbatany"). Claim 25 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Keith in view of Zarbatany and further in view of U.S. Patent No. 5,823,995 to Fitzmaurice et al. ("Fitzmaurice"). Claims 26 and 27 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Keith in view of Zarbatany and further in view of U.S. Patent No. 6,004,291 to Ressemann et al. ("Ressemann").

By the present Response, claims 23 and 25-27 have been amended. Reconsideration of the previously rejected claims and favorable action is requested in light of the above amendments and the following remarks.

#### **Specification Objection**

The Office Action objected to the Specification as failing to provide proper antecedent basis for the claimed subject matter. In particular, the Office Action stated that the Specification fails to disclose the step of inserting the guide tube into the distal tube so that the guide tube proximal end exits and extends from the distal tube flared proximal end. Applicant submits that paragraph 18 of the Specification discloses that the guide tube is inserted into the distal tube, as shown by the excerpt below:

**[0018]** As is shown in the drawing, the proximal end **12'** of *the distal tube 12* is *flared so as to fit on the distal end 11'* of the main tube and at the same time to *enclose the proximal end 13' of the guide tube 13*. ...

Applicant submits that paragraph 21 of the Specification discloses that the guide tube proximal end exits and extends from the distal tube flared proximal end, as shown by the excerpt below:

**[0021]** It should be noted that the guide tube **13** extends beyond the front end of the distal tube **12**. ...

Therefore, because the claims find proper support in the Specification, Applicant respectfully requests that the objection be withdrawn.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

The Office Action rejected claims 25-27 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, with respect to claim 25, the Office Action stated that the Specification fails to disclose that the step of inserting the guide tube into the distal tube is carried out before the step of inserting the two expanders. Applicant submits that paragraph 18 of the Specification discloses that the guide tube is inserted into the distal tube, as shown by the excerpt below:

**[0018]** As is shown in the drawing, the proximal end **12'** of *the distal tube 12* is *flared so as to fit on the distal end 11' of the main tube and at the same time to enclose the proximal end 13' of the guide tube 13*. ...

Applicant submits that paragraph 19 of the Specification discloses that the step of inserting the guide tube into the distal tube can be carried out before the step of inserting the two expanders, as show by the excerpt below:

**[0019]** *The tubes 11, 12, 13 thus arranged and combined* are then fixed to one another by means of a heat-sealing operation. To keep the tubes in shape in their zones to be sealed, and thus preventing their collapse and the blocking of their lumina, *two expanders 15 and 16 are inserted into the main tube 11 and in the guide tube 13*, respectively, which expanders are then extracted once the sealing has been performed.

Paragraph 19 of the Specification makes it clear that the distal tube 12 and the guide tube 13 can be arranged and combined as previously described in paragraph 18 of the Specification and that, after the tubes have been thus arranged and combined, the two expanders 15 and 16 can be

inserted. Therefore, the Specification discloses that that the step of inserting the guide tube into the distal tube can be carried out before the step of inserting the two expanders.

The Office Action also stated that the Specification fails to describe the step of trimming the guide tube proximal end and fails to describe that the step of trimming the guide tube proximal end is performed after the step of extracting the expanders. Applicant submits that paragraph 20 of the Specification discloses that the step of trimming the guide tube proximal end is performed after the step of extracting the expanders, as show by the excerpt below:

**[0020]** In particular, the sealing is done in order to seal to one another the contact zones of the guide tube with the main tube and the outer distal tube all around the main tube and the guide tube. *After this action, the expanders are extracted, and the initial ends of the guide tube and the distal tube are beveled in 17 as shown in the drawing.*

Paragraph 20 of the Specification explains that, after the expanders are extracted, the end of guide tube is beveled. As such, claims 26 and 27 have been amended above to change the word “trimming” to “beveling.” Therefore, because the claims find proper support in the Specification, Applicant respectfully requests that the rejections be withdrawn.

#### Claim Rejections – 35 U.S.C. § 112, Second Paragraph

The Office Action rejected claims 23-27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Office Action stated that, in claim 23, it is unclear if two expanders are being inserted into each of the main tube and the guide tube or if one expander is being inserted into each of the main tube and the guide tube. The Office Action also stated that, in claim 23, it is unclear which tubes are being referenced by the term “said tubes.” Applicant submits that claim 23 has been amended above to clarify that one expander is inserted into the distal end of the main tube and one expander is inserted into the proximal end of the guide tube, and to clarify that the term “said tubes” referred to the main tube and the guide tube. Therefore, Applicant respectfully requests that the rejections be withdrawn.

Claim Rejections – 35 U.S.C. § 103(a)

The Office Action rejected claims 23 and 24 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Keith in view of Zarbatany. The Office Action did not, however, address Applicant's previous argument that Keith fails to disclose the step of "inserting the deflected and inclined portion of the main tube into the distal tube flared proximal end," as recited in claim 23. Applicant explained in its previous Response dated December 11, 2008 that, even assuming *arguendo* that the Office Action's characterization of Figure 2 of Keith is correct, the deflected and inclined portion (72) of the main tube (22) is completely outside of and external to the distal tube (82). Likewise, assuming *arguendo* that the Office Action's characterization of Figure 7 of Keith is correct, the lateral opening (119) of the main tube (22C) is completely outside of and external to the distal tube (82C). As such, neither Figure 2 nor Figure 7 of Keith show the step of "inserting the deflected and inclined portion of the main tube into the distal tube flared proximal end." This feature of claim 23 provides a significant advantage over the catheter disclosed in Keith. For example, by inserting the deflected and inclined portion of the main tube into the distal tube, the catheter structure of the present invention is more resilient to the forces that can be imposed on the catheter during use and is more effective at providing a tight seal between the main tube and the distal tube. Therefore, Applicant maintains that claim 23 is distinguishable over the prior art of record for at least this reason.

Moreover, in order to further distinguish the prior art, claim 23 has been amended to recite the step of "inserting the deflected and inclined portion of the main tube into the distal tube flared proximal end, so that a portion of the guide tube near the proximal end of the guide tube covers the entire outside of said deflected and inclined portion of the main tube and so that the proximal end of the guide tube extends past the deflected and inclined portion of the main tube." Thus, claim 23 now specifies that a portion of the guide tube near the proximal end of the guide tube "covers the entire outside" of the deflected and inclined portion of the main tube, and that the proximal end of the guide tube "extends past" the deflected and inclined portion of the main tube. As admitted in a previous Office Action, Keith does not teach or suggest that a portion of the guide tube near the proximal end of the guide tube rests on the outside of the inclined portion

of the main tube. And, none of the prior art references of record compensate for this deficiency. For example, Figure 4 of U.S. Patent No. 5,846,246 to Dirks et al. ("Dirks") only shows a two-tube structure, and thus does not teach or suggest anything about the three-tube structure of the present invention. In addition, the tube (96) in Figure 4 of Dirks does not cover the entire inclined portion of the tube (102), nor does it extend past the inclined portion of the tube (102). For at least these reasons, Dirks fails to teach or suggest the features recited in claim 23.

In sum, Applicant respectfully submits that claim 23 is distinguishable from the combination of Keith and Zarbatany. Dependent claims 24-27 incorporate all the features of the claim 23, and thus are also distinguishable over Keith in view of Zarbatany for at least the reasons discussed above. Furthermore, Fitzmaurice and Ressemann do not compensate for the deficiencies in Keith and Zarbatany discussed above.

For all of the foregoing reasons, Applicant respectfully submits that claims 23-27 are allowable over the cited prior art. Favorable reconsideration of the claims is requested, including removal of the rejections under 35 U.S.C. § 103(a).

**CONCLUSION**

In view of the foregoing, the Applicant submits that this application is in condition for allowance and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this case might be advanced by discussing the application with the Applicant's representative, in person, or over the telephone, we would welcome the opportunity to do so.

EXCEPT for fees payable under 37 CFR §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 CFR §1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to deposit account No. 50-1349. This paragraph is intended to be a constructive petition for extension of time in accordance with 37 CFR §1.136(a)(3).

Respectfully submitted,

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Dated: August 5, 2009

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